



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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November 10, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Implementation of Section 309(j)
of the Communications Act
Competitive Bidding
PP Docket No. 93-253

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

Lisa M. Zaina
LM

Lisa M. Zaina
General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)
)

PP Docket No. 93-253

COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES

OPASTCO
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November 10, 1993

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SUMMARY

The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) submits comments to the FCC regarding implementation of Section 309(j) of the Communications Act.

OPASTCO believes that the FCC's proposed definition of "rural telephone company" is too restrictive, and should be broadened by increasing the allowable community size to 10,000 inhabitants. OPASTCO further believes that rural telephone company preferences, such as tax certificates and allowing the winning bid to be paid in installments over time, should not be limited to licenses covering specific geographic areas. OPASTCO also believes that the availability of Rural Electrification Administration financing should not have any bearing on the preferential treatment of rural telephone companies.

OPASTCO believes that the FCC's proposals for PCS license auctions should be modified so that the cellular ownership restrictions not apply to rural telephone companies and bids for the "C" and "D" blocks accepted simultaneously.

Finally, OPASTCO believes that certain services associated with the public switched telephone network should not be eligible for competitive bidding.

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**COMMENTS OF
 THE ORGANIZATION FOR THE PROTECTION AND
 ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

I. INTRODUCTION

On October 12, 1993, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking seeking comment on various spectrum auction methodologies and policies.¹ Congress, in the Omnibus Budget Reconciliation Act of 1993 (Budget Act), authorized the Commission to conduct auctions of the electromagnetic spectrum in order to choose from among two or more mutually exclusive applicants for the initial licenses of certain services. The NPRM responds to several mandates and deadlines included in the Budget Act. The Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) hereby submits its comments in response to the NPRM.

¹In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Notice of Proposed Rulemaking, 58 FR 53489 (October 15, 1993). (NPRM)

OPASTCO is a national trade association of more than 430 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve nearly two million customers.

For some time OPASTCO's member companies have taken an active interest in the debate over competitive bidding for licenses to provide spectrum-based services. This interest stems from two basic characteristics of small and rural local exchange carriers (LECs): 1) They are usually considered the expert telecommunications service providers in their communities; and 2) they are almost always small enterprises, providing telephone service to relatively few customers in remote, costly-to-serve areas, that do not have ready access to large amounts of capital.

When, in the past, competitive bidding was proposed by various members of Congress and the Department of Commerce's National Telecommunications and Information Administration (NTIA), OPASTCO maintained that spectrum auctions would not serve the public interest. The association asserted that competitive bidding would not automatically favor those entities most qualified to provide spectrum-based services, but would instead favor those entities most able to outbid other applicants in order to secure licenses. OPASTCO maintained that until a policy was formulated that would solve this "deep pocket" problem, competitive bidding should not be employed as a licensing tool.

In order to ensure that entrepreneurial firms and other small businesses still had a reasonable chance of being awarded licenses, Congress directed the FCC to "ensure that small businesses, rural telcos, and businesses owned by women and minorities are 'given the opportunity to participate' in the provision of spectrum-based services."² In its NPRM the FCC has proposed definitions of these so-called designated entities, and has further proposed several mechanisms for 1) spectrum auctions generally, and 2) PCS auctions in particular, that the Commission believes would further the goals that Congress has mandated.

OPASTCO believes that the FCC's proposed definition of "rural telephone company" is too restrictive, and should be broadened by increasing the allowable community size to 10,000 inhabitants. OPASTCO further believes that rural telephone company preferences, such as tax certificates and allowing the winning bid to be paid in installments over time, should not be limited to licenses covering specific geographic areas. OPASTCO also believes that the availability of Rural Electrification Administration financing should not have any bearing on the preferential treatment of rural telephone companies. OPASTCO believes that the FCC's proposals for PCS license auctions should be modified so that the cellular ownership restrictions not apply to rural telephone companies and bids for the "C" and "D" blocks be accepted simultaneously. Finally, OPASTCO believes that

²NPRM at para. 72.

certain services associated with the public switched telephone network should not be eligible for competitive bidding.

II. TREATMENT OF RURAL TELEPHONE COMPANIES IN COMPETITIVE BIDDING SITUATIONS GENERALLY

- A. Rural areas should include communities of up to 10,000 inhabitants, and the FCC should allow rural telephone companies to be defined as such via two different tests

In its NPRM the FCC proposes using the current definition of "rural" as found in the telephone company-cable television cross-ownership restriction. According to the "rural exemption" to that restriction, a rural area is defined as one that contains none of the following:

- 1) Any incorporated place of 2,500 inhabitants or more, or any part thereof;
- 2) Any unincorporated place of 2,500 inhabitants or more, or any part thereof; or
- 3) any other territory, incorporated or unincorporated, included in an urbanized area.³

The rule calls for all population statistics and definitions to be taken from the most recently available Census Bureau data.⁴ OPASTCO has stated in other proceedings that, in the context of the provision of cable television, this definition is too restrictive. OPASTCO has advocated relaxing the definition of

³47 C.F.R. Section 63.58.

⁴Id.

rural to include larger communities, and supports the FCC's own proposal to increase the population limit to 10,000 inhabitants per community.⁵

As the Commission noted in its NPRM, OPASTCO believes that the existing 2,500 inhabitant definition is too restrictive in the context of Personal Communications Services (PCS) as well. The 10,000 inhabitant community size that the Commission has proposed for the cable cross-ownership rural exemption should be viewed as the minimum acceptable definition of the maximum size of a rural community. However, the rural exemption model requires a slight modification in order to adequately respond to Congress' mandate. Although Congress' ultimate goal is to protect the customers of rural telephone companies, the problem such companies will face in the competitive bidding arena is based on their size as much as the rural nature of their wireline service areas. For that reason, OPASTCO believes that a second definitional test, based on the number of access lines served by a telephone company, would also serve the public interest.

Therefore, OPASTCO believes that, in order to fully comply with the spirit of Congress' directive, a two-pronged definition of rural telephone company should apply in this instance. A rural telephone company should be defined as a local exchange carrier that either:

⁵In the Matter of TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Second Further Notice of Proposed Rulemaking, 57 FR 41118 (September 9, 1992); OPASTCO Comments at 2 (October 13, 1992).

- a) provides local exchange service to a local exchange study area that does not include either
- 1) any incorporated place of 10,000 or more, or any part thereof, or
 - 2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993 (the date the Budget Act became law);
- OR
- b) provides telephone exchange service by wire to less than 10,000 access lines.⁶

Such a definition is preferable to the telephone company-cable television cross-ownership restriction rural exemption model by more accurately, and comprehensively, identifying those rural telephone companies that require preferential treatment in order to enjoy the economic opportunity Congress desired.

- B. Rural telephone company preferences should not be limited to licenses covering specific geographic areas

The Commission seeks comment on whether rural telephone companies should receive preferential treatment in the competitive bidding process only when those companies are bidding on licenses that cover "a market area or reliable service area that also encompasses all or some significant portion of their franchised service area."⁷ OPASTCO believes that rural telephone companies should receive preferential treatment, including tax

⁶OPASTCO suggests 10,000 access lines in the second part of the definition, but realizes that the Commission has also found companies with fewer than 50,000 access lines to be "small telephone companies" (47 C.F.R. Section 61.39). OPASTCO would support the incorporation of this size limit into the above definition.

⁷NPRM at para. 77.

certificates and the ability to pay the winning bid in installments over time, regardless of the specific spectrum block for which it is bidding.

The FCC's PCS auction proposals illustrate the reason for this. The geographic areas that the Commission has decided to issue PCS licenses for (Basic Trading Areas and Major Trading Areas, as defined by Rand McNally) have no relationship whatsoever with the wireline franchise areas of rural telephone companies. According the PCS licensing scheme outlined in the PCS Order,⁸ then, in some instances individual rural telephone companies will be bidding against each other for the single BTA license in which all of their wireline telephone areas fall. In other instances, a single rural telephone company wireline service area will straddle two or more BTAs.

Because there is no relationship between the spectrum-based service's license area and the rural telephone company's wireline service area, there should be no relationship between the areas covered by the licenses bid upon and the "preference" extended to rural telephone companies. Any attempt to establish a relationship would, in fact, deny meaningful participation opportunities to so-called "preferred" entities.

- C. The availability of Rural Electrification Administration financing should not have any bearing on the preferential treatment of rural telephone companies

⁸In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7618, Second Report and Order, 58 FR 59174 (November 8, 1993). (PCS Order)

The fact that some rural telephone companies receive financing from the Department of Agriculture's Rural Electrification Administration (REA) should not have any effect whatsoever on the preferences they might receive. Congress itself created the REA to assist telephone companies in the provision of modern telecommunications service to rural consumers. REA's existence has no bearing on the fact that rural telephone companies, along with the other entities specified by Congress, will not be able to effectively participate in spectrum auctions without corrective mechanisms. Congress' inclusion of rural telephone companies in this designated group demonstrates the fact that Congress itself recognized that the availability of REA financing does not effect the need for additional preferential treatment of rural telephone companies.

III. TREATMENT OF RURAL TELEPHONE COMPANIES IN COMPETITIVE BIDDING FOR PERSONAL COMMUNICATIONS SERVICES

- A. The cellular ownership restrictions should not apply to rural telephone companies

Because of deadlines set for the Commission by Congress, the FCC has included proposals for structuring competitive bidding for PCS in the instant NPRM along with its proposals for spectrum auctions in general. OPASTCO understands the time constraints facing the Commission, but must point out that its member companies' involvement in the provision of PCS will be affected to a large degree by the manner in which the competitive bidding process is structured. By proposing procedures for the auctioning of PCS licenses prior to the reconsideration of the

Commission's broadband PCS Order, the FCC has made it difficult for OPASTCO to comment on the effectiveness of the Commission's efforts to satisfy the Congressional mandate that rural telephone companies are "given the opportunity to participate" in the provision of spectrum-based services such as PCS. Nevertheless, to demonstrate the inter-relatedness of the issues, OPASTCO will make a few observations regarding the Commission's proposals for the auctioning of PCS licenses.

OPASTCO believes that an additional allowance should be made for rural telephone companies in the context of bidding for PCS licenses: the PCS license-holding restrictions on cellular operators should not be applied to the rural telephone company owners of such operators. In its broadband PCS order, the Commission stated that cellular licensees will only be able to hold a 10 MHz "E," "F," or "G," PCS license if their cellular license area covers more than 10 percent of the respective PCS license area. The FCC found that these restrictions should apply to any party that holds more than a 20 percent interest in a cellular licensee. Most significantly for rural telephone companies, the Commission also found that "the 20 percent cellular attribution limit will apply on a cumulative basis to all parties to a PCS license application with cellular holdings that overlap any portion of a PCS service area."⁹

⁹PCS Order at para. 107.

This means that rural telephone companies that hold a small, passive interest in the cellular partnership in their areas may be precluded from bidding together on a PCS license in their area. Because PCS service areas are relatively large when compared to the wireline service areas of most rural telephone companies, it may be most publicly beneficial to allow groups of rural telephone companies to form consortia to bid upon, and operate, those PCS licenses that cover their operating areas.

B. Bidding for "C" and "D" blocks should occur simultaneously

Another PCS-related issue is the sequence of bidding when applied to the "C" and "D" blocks of spectrum, which have been set aside as only open to bid by the "designated entities." These blocks are not contiguous -- "C" is located at 1880-1890/1960-1970 MHz, and "D" is located at 2130-2135/2180-2185 MHz.¹⁰ Although it is not certain at this time how problematic this fact is relative to creating one integrated service (or set of services) out of both blocks, OPASTCO does believe that the Commission should facilitate the combination of these two blocks by designated entities by accepting bids for both blocks simultaneously. Given the location of block "D's" 10 MHz in the spectrum, it appears that the presence of incumbent microwave users will render this block of limited use. By allowing bidding on both blocks simultaneously, the Commission will encourage the most efficient use of the spectrum in those blocks.

¹⁰Id. at para. 56.

IV. CERTAIN SERVICES ASSOCIATED WITH THE PUBLIC SWITCHED TELEPHONE NETWORK SHOULD NOT BE ELIGIBLE FOR COMPETITIVE BIDDING

The Commission has proposed that certain services be eligible for competitive bidding in the future.¹¹ OPASTCO believes that two of those services (intermediate microwave links and Basic Exchange Telephone Radio Systems [BETRS]), as used by LECS in the public switched telephone network, should not be eligible for initial licensing through competitive bidding.

Both services are used by LECs in order to efficiently configure the public network. In finding the services eligible for spectrum auctions, the FCC seems to put a lot of weight in the fact that LECs sell telephone service to end user customers. While this is certainly true, the customers are not buying the ability to "receive communications signals" or "transmit directly communications signals" via the spectrum.¹² They are, in fact, buying local exchange telephone service, which in certain circumstances happens to be provided over wireless facilities. Neither BETRS nor intermediate microwave links, then, should be subject to competitive bidding.

V. CONCLUSION

For the above-stated reasons, OPASTCO believes that the FCC's proposed definition of "rural telephone company" is too restrictive, and should be broadened by increasing the allowable

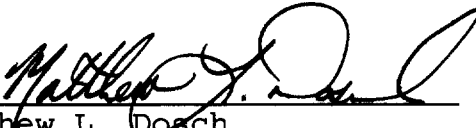
¹¹NPRM at paras. 114-166.


¹²New Section 309(j)(2)(A) of the Communications Act of 1934.

community size to 10,000 inhabitants. OPASTCO further believes that rural telephone company preferences, such as tax certificates and allowing the winning bid to be paid in installments over time, should not be limited to licenses covering specific geographic areas. OPASTCO also believes that the availability of Rural Electrification Administration financing should not have any bearing on the preferential treatment of rural telephone companies. OPASTCO believes that the FCC's proposals for PCS license auctions should be modified so that the cellular ownership restrictions not apply to rural telephone companies and bids for the "C" and "D" blocks be accepted simultaneously. Finally, OPASTCO believes that certain services associated with the public switched telephone network should not be eligible for competitive bidding.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES**

By: 
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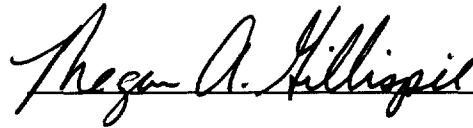
By: 
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General Counsel

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November 10, 1993

CERTIFICATE OF SERVICE

I, Megan A. Gillispie, hereby certify that a copy of OPASTCO's comments was sent on this, the 10th day of November, 1993, by first class United States mail, postage prepaid, to those listed below.

A handwritten signature in cursive script, reading "Megan A. Gillispie", written over a horizontal line.

Megan A. Gillispie

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